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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,552	04/22/2004	Allen Stein	2A08.1-012	6370
23506	7590	12/23/2005		
GARDNER GROFF, P.C. 2018 POWERS FERRY ROAD SUITE 800 ATLANTA, GA 30339			EXAMINER NEWTON, JARED W	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/829,552	Applicant(s) STEIN, ALLEN	
	Examiner Jared W. Newton	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>09/03/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of subject matter pertaining to Figure 1 in the reply filed on November 22, 2005 is acknowledged.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4-8, 13, 16, and 20 are rejected under the second paragraph of 35 U.S.C. 112 as indefinitely claiming the subject matter that the applicant regards as his invention.

In regard to the claims, the positive recitations below render the above claims indefinite:

- "...having a material sample displayed thereon, each said material sample extending..." on line 11 of claim 1;
- "...size of the material samples displayed..." on line 1 of claim 4;
- "...size of the material samples increases..." on line 1 of claim 5;
- "...material sample is a sample of floor covering..." on line 1 of claim 6;
- "...covering material is carpeting..." on line 1 of claim 7;
- "...sample is a sample of wall covering material..." on line 1 of claim 8;
- "...material sample mounted thereon, the material sample extending..." on line 2 of claim 13;

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- "...with material samples thereon..." on line 5 of claim 16;
- and, "...size of the material samples displayed on the display panels increases..." on line 1 of claim 20.

In particular, applicant functionally sets forth the material samples in line 1 of claims 1, 11, and 16, through the recitation "...for displaying sample of a plurality of different materials..." and then applicant improperly seeks to link the functionally recited structure of the material samples to the positive structure of the display device. Thus, the metes and bounds of the claims referring to said display device cannot be properly ascertained since one would not know whether the material samples are being positively claimed.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 10-17, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. Des. 249,000 to Simmons.

In regard to claim 1, Simmons discloses a display device comprising: a rack comprising a fixed body panel; a plurality of display panels detachably mounted to said rack, at least one of said panels being a hinged panel pivotally movable between a first position overlying a portion of another of said plurality of panels, and a second position

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not overlying the other panel, each of said plurality of panels comprising a free edge distal said rack, wherein the free edge of each of the plurality of display panels extends beyond the free edges of any overlying panels when the panels are in the first position (see FIG. 2); and each of said plurality of display panels having a material sample displayed thereon, each said material sample extending to the free edge of the panel it is mounted on (see FIG. 1).

In regard to claim 2, Simmons further discloses each of said plurality of display panels as mounted to the rack at a position horizontally offset from an adjacent one of the plurality of display panels (see FIG. 1).

In regard to claim 3, Simmons further discloses each of said plurality of display panels being wider than an adjacent overlying one of the plurality of display panels. As shown in Figure 2, Simmons discloses four display panels disposed between two opposing storyboard end members. As shown, the leftmost and rightmost members are wider (width being measured from the rack end to the distal end of said members) than the overlying innermost members disposed between said leftmost and rightmost members.

In regard to claim 4, Simmons further discloses the size of the material samples increasing with the respective size of the display panels (see FIG. 1).

In regard to claim 10, Simmons further discloses a first plurality of display panels mounted to a first side of said rack, and a second plurality of display panels mounted to a second side of said rack (see FIG. 1).

In regard to claim 11, Simmons discloses a display device comprising: a rack having a base at the bottom of said rack, a body panel extending generally upright from said base, and a story-board extending laterally from said body panel; and an array of display panels mounted to said rack and overlying a portion of the story-board such that said story-board is only partially visible behind the array of display panels to an observer positioned in front of the display device with the array of display panels between the observer and the story-board (see FIG. 1).

In regard to claim 12, Simmons further discloses each of the display panels of said array being hingedly mounted to the rack, whereby the display panels can be pivotally moved between a first position supported against said story-board and a second position wherein substantially the entire story-board is visible (see FIG. 1).

In regard to claim 13, Simmons further discloses each of the display panels of said array having a free edge distal said rack and a material sample mounted thereon, the material sample extending substantially to the free edge of the panel.

In regard to claim 14, Simmons further discloses the rack having a first storyboard extending laterally from a first side (left-hand side) thereof, and a second storyboard extending laterally from a second side (right-hand side) thereof (see FIG. 1).

In regard to claim 15, Simmons further discloses said device comprising a first array of display panels mounted to said rack and overlying a portion of the first storyboard such that said first story-board is only partially visible behind the first array of display panels, and a second array of display panels mounted to said rack and overlying

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a portion of the second story-board such that said second story-board is only partially visible behind the second array of display panels (see FIG. 1).

In regard to claim 16, Simmons discloses a display device comprising a first array of display panels pivotally mounted to a first side of a rack, and a second array of display panels pivotally mounted to a second side of the rack, wherein underlying display panels of each of the first and second arrays have free edges with material samples thereon extending beyond free edges of overlying display panels, and wherein story-board portions of the rack are partially visible behind each of the first and second arrays of display panels (see FIG. 1).

In regard to claim 17, Simmons discloses the display device of claim 16, said device further comprising underlying display panels of each of the first and second arrays being progressively wider than adjacent overlying display panels (see FIG. 2).

In regard to claim 19, Simmons further discloses each display panel being pivotally mounted to the rack at a position horizontally offset from an adjacent display panel (see FIGS. 1 and 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over '000 to Simmons as applied to claims 1, 11, and 16 above, alone.

In regard to claims 5 and 20, Simmons discloses a device comprising the limitations of claim 1, but does not disclose the size of said material samples increasing with the cost of said material. Simmons shows some panels supporting larger samples of materials than others. The examiner takes official notice that it would have been obvious to one of ordinary skill in the art at the time of the invention that the larger samples would cost more than the smaller samples. Therefore, Simmons shows the size of material samples increasing with the cost of the materials displayed.

In regard to claim 18, Simmons discloses the device comprising all of the limitations of claim 17, and further discloses underlying display panels of the first (left-hand side) array being progressively taller than adjacent overlying display panels, but does not disclose the same for the second array of display panels. It would have been obvious to one of ordinary skill in the art at the time of the invention to include the configuration of the first array of panels as disclosed by Simmons on the second array of panels. Said configuration is obvious and known in light of the teachings of Simmons, and it is within the scope of the invention to Simmons to provide both sides of said display device with said configuration.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over '000 to Simmons as applied to claim 1 above, and further in view of US Patent No. 5,715,949 to Rutledge. Simmons discloses a device comprising all of the limitations of claim 1, but does not disclose said sample material comprising a floor covering material,

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or more specifically, carpeting. Rutledge discloses a sample display rack, wherein said samples are floor covering samples, and more specifically, carpet. It would have been obvious to one of ordinary skill in the art at the time of the invention to display floor coverings or carpet as disclosed by Rutledge on the rack as disclosed by Simmons. It is well known in the art of display devices comprising pivotally attached samples, such as those disclosed by Simmons and Rutledge, to utilize said devices for displaying carpet samples as disclosed by Rutledge, therefore It would have been obvious to one of ordinary skill in the art at the time of the invention to display carpet samples on the device as disclosed by Simmons. It is within the scope of the invention as disclosed by Simmons to store carpet samples on said display panels. The racks to Simmons and Rutledge are of similar construction, and it is within the scope of both inventions to store any type of displayed merchandise capable of hanging from a display panel, including carpet, jewelry, wallpaper, posters, tile, and clothing.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over '000 to Simmons as applied to claim 1 above, and further in view of US Patent No. 3,777,896 to Ehrlich. Simmons discloses a device comprising all of the limitations of claim 1, but does not disclose said sample material comprising a wall covering material. Ehrlich discloses a sample display rack, wherein said samples are wall covering samples, and more specifically, posters. It would have been obvious to one of ordinary skill in the art at the time of the invention to display wall coverings as disclosed by Ehrlich on the rack as disclosed by Simmons. It is well known in the art of display devices comprising pivotally attached samples, such as those disclosed by Simmons and Ehrlich, to utilize

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said devices for displaying wall coverings as disclosed by Ehrlich, therefore It would have been obvious to one of ordinary skill in the art at the time of the invention to display wall coverings on the device as disclosed by Simmons. It is within the scope of the invention as disclosed by Simmons to store wall coverings on said display panels. The racks to Simmons and Ehrlich are of similar construction, and it is within the scope of both inventions to store any type of displayed merchandise capable of hanging from a display panel, including carpet, jewelry, wallpaper, posters, tile, and clothing.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over '000 to Simmons as applied to claim 1 above, and further in view of US Patent No. 3,079,725 to La Fleur. Simmons discloses a device comprising all of the limitations of claim 1 as set forth above, and further discloses said device comprising a storyboard extending at least partially beyond peripheral edges of the plurality of display panels. Simmons does not disclose said storyboard displaying information. La Fleur discloses a catalog display 20 comprising display pages 43 overlying a display panel 42, said display further comprising a storyboard 40 displaying information regarding said catalog display (see FIG. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to include advertising information, such as sample price, as disclosed by La Fleur, on the storyboard of the device as disclosed by Simmons. The motivation for including said information would be to promote the items being displayed, as is disclosed by La Fleur (see Column 1, Line 35).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- US Patent No. Des. 235,818 to Folkart
- US Patent Application Publication No. 2001/0054594 to Maier-Hunke
- US Patent No. 5,899,343 to Franklin

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jared W. Newton whose telephone number is (571) 272-2952. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

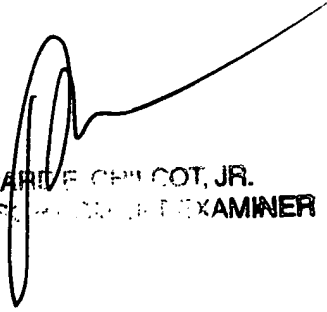
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JWN

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A handwritten signature in black ink, appearing to be "J. M. F.", written in a cursive style.A handwritten signature in black ink, appearing to be "Richard E. Gilcot, Jr.", written in a cursive style.

RICHARD E. GILCOT, JR.
SUPERVISOR OF PATENT EXAMINER